IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.768-SB of 1995 (O&M)

Date of decision: 11.5. 2007

Sukhwinder Singh & another.

-----Appellant.

Vs.

State of Punjab.

-----Respondent.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL

Present: Mr. G.S. Sandhawalia, Advocate
for the appellant.

Mr. Shilesh Gupta, DAG, Punjab.

The appellants question their conviction under Section 326/323/34 IPC. They stand sentenced as under:-

Sukhwinder Singh:-

RI for two years and fine of Rs.1000/-, in default, to undergo further RI for one month under Section 326 IPC.

RI for six months under Sections 323/34 IPC.

Balwant Singh:-

RI for two years and fine of Rs.1000/-, in default, to undergo further RI for one month under Section 326/34 IPC.

RI for six months under Sections 323 IPC.

Both the sentences of both the accused are to run concurrently.

Case of the prosecution is that on 6.9.1994, mother of Gurmit Raj (PW-2) went to the house of Balwant Singh to protest against flowing of cow-dungs into the drain by the side of their house. She came back. Balwant Singh, accused was present outside the Haveli, who declared that he will not co-operate in the matter. Sukhwinder Singh son of Balwant Singh armed with gandasi started giving abuses and gave a blow on the forehead of Gurmit Raj. He also gave two blows on the right side of the neck and two more blows by reverse side. Balwant Singh inflicted dang blows on Roop Lal and Bachan Kaur. The complainants' side also caused injuries in self-defence. Cross-cases were registered against both the sides. Present case was registered on the statement of Gurmit Raj (PW-2) and after investigation, both the appellants were challaned.

The prosecution examined PW-1 Dr. Prem Parkash, PW-2 Gurmit Raj, PW-3 Roop Lal, PW-4 Bachan Kaur and PW-5 Darshan Singh, ASI.

According to medical evidence, injury No.1 on the person of Gurmit Raj was incised wound 4 cm x .25 cm x .5 cm on his left frontal region. On x-ray, cut fracture of the left parietal bone was detected. Other injuries were superficial. For the grievous injury, conviction has been recorded under Sections 326 and 326/34 IPC for simple injuries, conviction has been recorded under Sections 323 and 323/34.

There being direct evidence of injured witnesses PW-2 Gurmit Raj, PW-3 Roop Lal and PW-4 Bachan Kaur, learned counsel

for the appellants is unable to raise any question against their conviction.

Learned counsel for the appellants, however, points out that in cross-case, Roop Lal and Gurmit Raj had been convicted and when their appeal came up for hearing in this Court being Criminal Appeal No.5-SB of 1996 (***Roop Lal and another v. The State of Punjab)*** on 15.10.2003, this Court reduced the sentence to the period already undergone and the same analogy should be applied to the case of the appellant also. He also referred to affidavit on behalf of the complainant (Annexure A-1) dated 19.11.2003, who has no objection to the sentence being reduced to the sentence already undergone.

In view of above facts and circumstances, I am of the view that ends of justice will be met if while upholding the conviction and sentence of fine as awarded by the trial Court, custodial sentence awarded to the appellants is reduced to the period already undergone.

Ordered accordingly.

The appeal is disposed of.

May 11, 2007 (**ADARSH KUMAR GOEL)**
ashwani **JUDGE**